

MAR 17 2016

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY MS

In the Matter of:

No. 15A-194-INS

**LOPEZ MALDONADO, ARELY
BETZABE,**

ORDER

Petitioner.

On March 7, 2016, the Office of Administrative Hearings, through Administrative Law Judge Tammy L. Eigenheer, issued an Administrative Law Judge Decision ("Recommended Decision"), received by the Interim Director of the Department of Insurance ("Interim Director") on March 9, 2016, a copy of which is attached and incorporated by this reference. The Interim Director of the Department of Insurance has reviewed the Recommended Decision and enters the following Order:

1. The Interim Director adopts the Recommended Findings of Fact and Conclusions of Law.


2. The Interim Director grants Arely Betzabe Lopez Maldonado's application for an Arizona insurance producer license.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.09, Petitioner may request a rehearing with respect to this order by filing a written motion with the Interim Director of the Department of Insurance within 30 days of the date of this Order, setting forth the basis for relief under A.A.C. R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to Superior Court.

1 Petitioner may appeal the final decision of the Interim Director to the Superior Court
2 of Maricopa County for judicial review pursuant to A.R.S. § 20-166. A party filing an appeal
3 must notify the Office of Administrative Hearings of the appeal within ten days after filing
4 the complaint commencing the appeal, pursuant to A.R.S. § 12-904(B).

5 DATED this 16th day of March, 2016.

6
7 
8 Leslie R. Hess, Interim Director
Arizona Department of Insurance

9
10 COPY of the foregoing mailed this
11 17th day of March, 2016, to:

12 Gordon Bueler
13 Bueler Jones LLP
14 1300 N. McClintock Dr., Suite B4
Chandler, Arizona 85226-7241
Attorney for Petitioner

15 Mary Kosinski, Executive Assistant for Regulatory Affairs
16 Catherine O'Neil, Consumer Legal Affairs Officer
17 Steven Fromholtz, Licensing Administrator
Arizona Department of Insurance
2910 North 44th Street, Suite 210
Phoenix, Arizona 85018

18 Liane Kido
19 Assistant Attorney General
1275 West Washington Street
20 Phoenix, Arizona 85007-2926

21 Office of Administrative Hearings
1400 West Washington, Suite 101
22 Phoenix, Arizona 85007

23
24 
Maidene Scheiner

RECEIVED

MAR 09 2016

AZ DEPT. OF INSURANCE
ADMINISTRATIVE SERVICES

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF APPLICATION FOR
INSURANCE LICENSE OF:

No. 15A-194-INS

LOPEZ MALDONADO, ARELY BETZABE

ADMINISTRATIVE LAW JUDGE
DECISION

Petitioner.

HEARING: February 16, 2016

APPEARANCES: Petitioner Arely Betzabe Lopez Maldonado was represented by Gordon Bueler. The Arizona Department of Insurance was represented by Assistant Attorney General Liane Kido.

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

FINDINGS OF FACT

1. On or about November 27, 2015, Arely Betzabe Lopez Maldonado submitted an Application for an Insurance License for and Individual (Application) with the Arizona Department of Insurance (Department).

2. Ms. Lopez Maldonado answered "Yes" to Question C, Subpart 1 in Section V, Additional Information on the Application. Question C asked: "Have you EVER been found guilty of, have you had a judgment made against you for, or have you admitted to, any of the following." Ms. Lopez Maldonado answered yes to subpart 1, "A felony (of any kind)."

3. In a letter dated November 30, 2015, the Department informed Ms. Lopez Maldonado that her application had been denied.

4. Ms. Lopez Maldonado requested a hearing, which led to this matter being conducted.

5. The Notice of Hearing shows that the Department denied Ms. Lopez Maldonado's application based on A.R.S. § 20-295(A)(6) and A.R.S. § (A)(8).

6. On or about June 21, 2010, Ms. Lopez Maldonado pled guilty to, and was convicted of, Criminal Impersonation, a class 6 designated felony in violation of A.R.S.

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1 § 13-2001 and A.R.S. § 13-2006. Ms. Lopez Maldonado was sentenced to one year of
2 unsupervised probation.

3 7. Ms. Lopez Maldonado testified that in 1999, when she was 18 years old,
4 she was applying to work at McDonald's. At that time, her father gave her a social
5 security number to use for employment purposes because the one she had indicated it
6 was not valid for work. Ms. Lopez Maldonado was hired and worked at McDonald's
7 until 2010, and during that time, she worked her way up to manager. Ms. Lopez
8 Maldonado testified that, as the manager, she was responsible for hiring people,
9 including obtaining employees' social security numbers, handled deposits, and
10 managed the schedules. In 2010, it came to light that she had used a false social
11 security number when she applied in 1999, and Ms. Lopez Maldonado was convicted of
12 Criminal impersonation as detailed above. Ms. Lopez Maldonado acknowledged that
13 what she did was wrong and she was guilty, but she wants to grow and be someone.
14 Ms. Lopez Maldonado stated she passed the examination to become an insurance
15 producer knowing that her conviction might prevent her from receiving a license. Ms.
16 Lopez Maldonado testified that after leaving McDonald's, she and her husband started
17 a cleaning company and has never had any issues with clients. Ms. Lopez Maldonado
18 indicated that she assists with financial matters at her church including handling
19 offerings, deposits, and signing checks for the pastor's salary and bills. Ms. Lopez
20 Maldonado testified that she feels she is honest and trustworthy and would be able to
21 make a contribution to the industry.

22 8. Ms. Lopez Maldonado presented the testimony of several character
23 witnesses including her current and previous employers and members of her church.

24 a. Alonso Cornejo and Alesha Cornejo, Ms. Lopez Maldonado's current
25 employers, testified to her honesty and trustworthiness. Both stated that
26 Ms. Lopez Maldonado was entrusted to watch their young child. Further,
27 Ms. Lopez Maldonado knows their passwords passcodes, and alarm
28 codes, and had never done anything to cause concern. Mr. Cornejo also
29 stated that Ms. Lopez Maldonado passed the examination on the first
30 attempt, which he failed to do, which demonstrated her dedication.

1 b. Ms. Lopez Maldonado's former employer, Richard Coulston, a retired
2 McDonald's operator, testified that Ms. Lopez Maldonado started on the
3 ground floor at the store and worked her way up to the General Manager
4 where she was in charge of the store from the top to the bottom. Mr.
5 Coulston stated that Ms. Lopez Maldonado had access to thousands of
6 dollars a day and to employee's information and never demonstrated a
7 cause of concern. Mr. Coulston testified Ms. Lopez Maldonado was
8 honest and trustworthy.

9 c. Ms. Lopez Maldonado's former employer Geoff Coulston, a
10 McDonald's franchisee, testified that he hired Ms. Lopez Maldonado for
11 an entry-level position and she eventually worked her way up to the Store
12 Manager for a couple of stores. Mr. Coulston had no concerns with her
13 ability to handle her assigned tasks. Mr. Coulston stated that Ms. Lopez
14 Maldonado was the top performing manager in their six stores at the time.
15 Mr. Coulston testified that Ms. Lopez Maldonado housesits for him and
16 she is a family friend. Mr. Coulston stated he believed Ms. Lopez
17 Maldonado was honest and trustworthy.

18 d. Nelson Perez, Good Shepard Church, testified that Ms. Lopez
19 Maldonado has been a member of the church since 2003. Ms. Lopez
20 Maldonado was a Sunday school teacher, and eventually oversaw all the
21 teachers, but had recently moved to working with the women's group. In
22 her current role, Ms. Lopez Maldonado has access to everything at the
23 church and handles many of the financial matters including writing checks
24 and paying bills.

25 e. Cecilia Bonilla, the wife of the pastor at Good Shepard Church,
26 testified that she had known Ms. Lopez Maldonado for 11 years and
27 believed her to be honest and trustworthy. Ms. Bonilla stated that Ms.
28 Lopez Maldonado was the "right hand of the church." Ms. Bonilla
29 indicated that Ms. Lopez Maldonado handles a lot of the finances
30 including paying the bills.

1 f. Nancy Ramirez, the daughter of the pastor at Good Shepard Church,
2 testified that she had known Ms. Lopez Maldonado for 11 years and
3 believed her to be trustworthy and honest. Ms. Ramirez stated that the
4 most important thing in the church is the children and the members would
5 give their children to Ms. Lopez Maldonado to care for them.

6 9. Steven Fromholtz, Producer Licensing Administrator for the Department,
7 testified that part of the role of the Department is to protect the public. Because Ms.
8 Lopez Maldonado's 2010 conviction related to misuse of a social security number and
9 an insurance agent would have access to people's social security numbers, the
10 possibility exists that she would misuse those social security numbers in the future. Mr.
11 Fromholtz specifically testified that the recentness of the conviction was an area of
12 concern and that the Department viewed the conviction as evidence of Ms. Lopez
13 Maldonado's lack of honesty and trustworthiness.

14 CONCLUSIONS OF LAW

15 1. Ms. Lopez Maldonado bears the burden of persuasion. A.R.S. § 41-
16 1092.07(G)(1).

17 2. The standard of proof on all issues is that of a preponderance of the
18 evidence. A.A.C. R2-19-119(A).

19 3. A preponderance of the evidence is "[e]vidence which is of greater weight
20 or more convincing than the evidence which is offered in opposition to it; that is,
21 evidence which as a whole shows that the fact sought to be proved is more probable
22 than not." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

23 4. A.R.S. § 20-295(A)(6) provides that the Department's Director may deny
24 an applicant's request for a license when the applicant has "been convicted of a
25 felony." The uncontroverted evidence established that Ms. Lopez Maldonado was
26 convicted of Criminal Impersonation, a class 6 felony, in 2010. Thus, the Department's
27 Director has the authority to deny her request for a license.

28 5. A.R.S. § 20-295(A)(8) provides that the Department's Director may deny
29 an applicant's request for a license when the applicant has "[used] fraudulent, coercive
30 or dishonest practices, or demonstrat[ed] incompetence, untrustworthiness or financial

1 irresponsibility in the conduct of business in this state or elsewhere.” Ms. Lopez
2 Maldonado’s use of a false social security number when applying for employment in
3 1999 falls within the definition of fraudulent or dishonest practices. Thus, the
4 Department’s Director has the authority to deny her request for a license.

5 6. Notably, Ms. Lopez Maldonado’s act of using a false social security
6 number to secure employment occurred in 1999 even though her conviction did not
7 occur until 2010. While the Department cited the recentness of Ms. Lopez
8 Maldonado’s conviction as a cause of concern, her illegal conduct occurred 11 years
9 before that conviction. During the intervening 11 years, Ms. Lopez Maldonado rose
10 through the ranks at McDonald’s to become a general manager and in that position she
11 had access to thousands of dollars and countless employees’ personal information,
12 including social security numbers. Ms. Lopez Maldonado has also had access to the
13 deposits and checks for her church for many years. As an owner of a cleaning
14 company, Ms. Lopez Maldonado had access to people’s homes. In her current
15 employment, Ms. Lopez Maldonado was given passwords, passcodes, and alarm codes
16 for her employers. Despite this access to personal information and financial accounts
17 in each of these positions, Ms. Lopez Maldonado had no reported incidences of
18 improper conduct. Further, numerous character witnesses testified that Ms. Lopez
19 Maldonado was honest and trustworthy.

20 7. The plain language of the statute in question provides that the Director of
21 the Department *may* deny Ms. Lopez Maldonado’s application based on the felony
22 conviction and prior dishonest conduct but does not require a denial. Such a decision
23 to deny is within the discretion of the Director.

24 8. While the Department’s Director has grounds to deny Ms. Lopez
25 Maldonado’s application, Ms. Lopez Maldonado has met the burden to show that her
26 application should be granted.

27 **ORDER**

28 **IT IS ORDERED** that Arely Betzabe Lopez Maldonado’s appeal be granted.
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1 *In the event of certification of the Administrative Law Judge Decision by the*
2 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
3 *five days after the date of that certification.*

4 Done this day, March 7, 2016.

5 /s/ Tammy L. Eigenheer
6 Administrative Law Judge

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9 Transmitted electronically to:

10 Leslie R. Hess, Financial Affairs Legal Analyst
11 Arizona Department of Insurance

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